



**RE: FW: FW: Water Effect Ratios in Washington**  
**Niemi, Cheryl (ECY)** to: Lisa Macchio  
Cc: Matthew Szelag

05/04/2011 11:11 AM

Here's the approval letter and accompanying enclosure (TSD):

Approval letter:

[http://www.ecy.wa.gov/programs/wq/swqs/wa-wqs\\_00306\\_final\\_appvl.pdf](http://www.ecy.wa.gov/programs/wq/swqs/wa-wqs_00306_final_appvl.pdf)

Enclosure:

[http://www.ecy.wa.gov/programs/wq/swqs/final\\_tsd-020708.pdf](http://www.ecy.wa.gov/programs/wq/swqs/final_tsd-020708.pdf)

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-----Original Message-----

From: Macchio.Lisa@epamail.epa.gov [mailto:Macchio.Lisa@epamail.epa.gov]  
Sent: Wednesday, May 04, 2011 10:33 AM  
To: Niemi, Cheryl (ECY)  
Cc: Szelag.Matthew@epamail.epa.gov  
Subject: Re: FW: FW: Water Effect Ratios in Washington

I can't find the exact letter given the link you sent me. Can you please send me a copy of our approval letter that you are referring to?  
Thanks

From: "Niemi, Cheryl (ECY)" <[cnie461@ECY.WA.GOV](mailto:cnie461@ECY.WA.GOV)>  
To: Lisa Macchio/R10/USEPA/US@EPA, Matthew Szelag/R10/USEPA/US@EPA  
Date: 05/04/2011 09:00 AM  
Subject: FW: FW: Water Effect Ratios in Washington

Het - forgot to send the link to the approval letters:  
<http://www.ecy.wa.gov/programs/wq/swqs/2006RuleRev.html>

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-----Original Message-----

From: Niemi, Cheryl (ECY)  
Sent: Wednesday, May 04, 2011 8:31 AM  
To: 'Macchio.Lisa@epamail.epa.gov';  
Szelag.Matthew@epamail.epa.gov  
Subject: RE: FW: Water Effect Ratios in Washington

Thanks Lisa.

We are now doing an internal evaluation to see if the permit managers are under pressure to do WERs. We received a lot of comments about them in the triennial review scoping but are doing the internal truth-check to see how important it really seems to be. So - we should probably wait for a month or so until that exercise is done before I start using more of your time on this.

However, I am confused by your e-mail below because I read the Feb 11, 2008 approval letter (page 70) to mean that the WER toxicity guidance we had in the permit writer's manual was formally approved by EPA, and that Charlie's review was part of this. Here's the language from the letter:  
"The information contained in Chapter 5 of Appendix 6 is based on scientifically defensible methods and is appropriate in providing guidance in developing WERs and based on our evaluation would be as protective as EPA's guidance for developing WERs." I read this part of the letter to mean this was CWA approved. But - if we wanted to go for the performance-based approach (to use WERs in permits) we'd have to develop the rest of the program and also get that approved by you. That would include guidance on implementation, oversight,

review, public  
process, tracking, etc.

I agree that any type of site-specific criteria development needs a tremendous amount of technical oversight. My experience with SSC development for metals and cyanide have been "intense" experiences - both technically and policy-wise, and I don't assume that going the performance-based route would let us off the hook for a high level of review. Figure that anything going through ESA review and CWA approval at this time needs to carry quite a lot of assurance that it will work.

So- are you sure the WER guidance for tox testing was not approved?  
What more would it need?

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-----Original Message-----

From: Macchio.Lisa@epamail.epa.gov [  
mailto:Macchio.Lisa@epamail.epa.gov]

Sent: Monday, May 02, 2011 3:53 PM  
To: Niemi, Cheryl (ECY)  
Cc: Szelag.Matthew@epamail.epa.gov  
Subject: Re: FW: Water Effect Ratios in Washington

Cheryl - I'm just catching up. We should set up a time to discuss what options would be best as you think about how you'd like WERs to be developed and addressed in your WQS. I personally have found WER development very challenging and it requires very close attention to detail. I have found it necessary to have someone involved reviewing the development that is very knowledgeable regarding WER guidance and toxicity testing.

So let's set up some time for the 3 of us to discuss this and I can share my very limited knowledge on this subject.

Don't know if you knew, but I had our "WER" expert,

Charlie Delos give  
your guidance a very brief review back when I was  
working on this. He  
seemed to think it looked good. But note- EPA did  
not provide a  
detailed review and formal opinion and approval on  
your guidance.

From: "Niemi, Cheryl (ECY)"  
<cnie461@ECY.WA.GOV>  
To: Matthew  
Szelag/R10/USEPA/US@EPA  
Cc: Lisa  
Macchio/R10/USEPA/US@EPA  
Date: 04/26/2011 11:59 AM  
Subject: FW: Water Effect  
Ratios in Washington

Hi Matt.

We are thinking about triennial review priorities.  
We received many  
comments asking us to revise the standards to allow  
us to use WERs in  
permits. I'd like to know, in general, what we would  
need to do to get  
to that point. Our toxicity testing guidance was  
already approved by  
EPA in the last set of CWA revisions. Lisa worked on  
that part of the  
approval. Based on the end of her e-mail below (from  
when we were  
working on the Puget Sound Naval Shipyard) it looks  
like a "performance  
based" approach might be an option. What would we  
need to do to get  
footnote dd of the toxics tale revised to allow us to  
use WERs in  
permits?

Thanks,

Cheryl

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From: Macchio.Lisa@epamail.epa.gov [

mailto:Macchio.Lisa@epamail.epa.gov]

Sent: Wednesday, September 05, 2007 9:42 AM  
To: Niemi, Cheryl (ECY)  
Cc: Chu.Rebecca@epamail.epa.gov;  
Jennings.Jannine@epamail.epa.gov;  
Poulsom.Susan@epamail.epa.gov  
Subject: Water Effect Ratios in Washington

Cheryl - I'd like to follow up with you on a committment I made during the conference call between Ecology and EPA on the PSNS proposed WER. I agreed that EPA would look into the Ecology statement/position made on the call regarding WERs and EPA approval.

If I remember correctly, Ecology staff were of the opinion that individual WERs do not go through State rulemaking and are not submitted to EPA for review and approval.

I have looked into EPA's past approval actions (March 18, 1993 approval, February 22, 1998 approval) in Washington which are relevant and which reveal whether EPA had taken a position consistent with Ecology's opinion. Attached are those letters:

Our review of these actions along with EPA guidance on WERs has led us to the following conclusion: It is our opinion that Washington's language regarding WERs, as contained in footnote "'dd" to your toxics criteria table, does not satisfy the requirements laid out in option 2 in EPA's 1994 guidance memo and therefore Washington should be submitting each individual WER determination to EPA for review and approval.

For some background -

In 1994, EPA issued guidance on use of the WER in WQS. This document laid out the following two options for States for WERs:  
(1) A State may derive and submit each individual WER determination to EPA for review and approval.  
(2) A State can include in its WQS a formal procedure which includes derivation of WERs, appropriate definition of sites, and enforceable

monitoring provisions to assure that designated uses are protected. Both this procedure and the resulting criteria would be subject to full public participation requirements. Public review of a site-specific criterion could be accomplished in conjunction with the public review required for permit issuance. EPA would act on this protocol as a revised standard. For public information, we recommend that once a year the State publish a list of site specific criteria.

Here is a part of that document:

Based on our review of EPA's past actions and EPAs guidance, we are not in agreement with Ecology's opinion regarding the process for WERs. Therefore, if a WER were developed for PSNS it would have to be adopted by Washington into rule and submitted and approved by EPA prior to use in an EPA issued permit.

If Ecology would like to pursue an approach consistent with option (2), EPA and Ecology will need to have discussions as to what is needed in order for that approach to be in effect.

Let us know how you would like to proceed.  
[attachment "WA 1993 Approval.pdf" deleted by Lisa Macchio/R10/USEPA/US]  
[attachment "Tudor 1994 WER Guidance.pdf" deleted by Lisa Macchio/R10/USEPA/US] [attachment "1998approval.pdf" deleted by Lisa Macchio/R10/USEPA/US]